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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

JABARI K. KING,

Defendant and Appellant.

A113498

(San Mateo County  
Super. Ct. No. SC058588A)

Defendant Jabari K. King appeals from imposition of sentence after the trial court revoked his probation. King's attorney has filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436, requesting our independent review of the record. We find no arguable issue and affirm.

**BACKGROUND**

King's ex-girlfriend testified at the preliminary hearing that on April 10, 2005, she was at the home of King's sister. King called and told her "[t]hat if I didn't return to the house—he was going to take me." Later that day, King came to the house, approached her with a knife and a metal bat in his hands, and hit her on her forehead with his hand. King then left the house and the victim locked the door. She saw King trying to reenter the house through the kitchen window, with the knife in his hand. While attempting to come through the window, he said that he was going to kill her.

The victim also testified that the previous day she and King had fought and King threw a chair, hitting her.

An information was filed charging King with (1) burglary (Pen. Code,<sup>1</sup> § 460, subd. (a)) that was a serious felony (§ 1192.7, subd. (c)(18)) in connection with which he used a deadly weapon (§ 12022, subd. (b)(1)), and that a person who was not an accomplice was present in the residence during the burglary (§ 667.5, subd. (c)(21); (2) felony criminal threat of great bodily injury (§ 422) with allegations that it was a serious felony, and that a deadly weapon was used; (3) two counts of misdemeanor battery (§ 243, subd. (e)(1)); (4) two counts of misdemeanor displaying a deadly weapon (§ 417, subd. (a)(1)); (5) two counts of violation of a court order (§ 166, subd. (c)(1)); (6) two counts of misdemeanor child abuse (§ 273a, subd. (b)); and (7) battery on the mother of his child (§ 273.5, subd. (a)) with an allegation of a prior conviction for battery.

King initially pleaded not guilty to all of the counts and denied all of the special allegations. On June 27, 2005, he pleaded no contest to the count of making a criminal threat and one count of misdemeanor battery, and admitted use of a deadly weapon and that the threat of great bodily injury was a serious felony. The remaining counts and allegations were dismissed. King was informed that the maximum sentence would be three years in prison. The trial court referred the matter to the probation department for a sentencing report.

On November 18, 2005, the court denied probation on the battery count and sentenced King to 336 days in county jail, with credit for 336 days served. On the criminal threat count, the court suspended imposition of sentence and placed King on three years probation. He also was ordered to serve one year in county jail, with credit for 336 days served. A condition of King's probation was that he not contact or communicate with the victim. On December 28 an affidavit was filed alleging that King used a controlled substance in violation of the terms of his probation. King denied the allegation and the court revoked his probation. On February 23, 2006, King admitted the allegation and on March 17, 2006, he was sentenced to two years for the criminal threat

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<sup>1</sup> All further statutory references are to the Penal Code.

and one year for the use of a deadly weapon, to run consecutively. He was given credit for 492 days served.

## **DISCUSSION**

Under section 1203.2, subdivision (a), the court is authorized to revoke probation “if the interests of justice so require and the court, in its judgment, has reason to believe . . . that the person has violated any of the conditions of his or her probation . . . .” The violation must be proven by a preponderance of the evidence. (*People v. Rodriguez* (1990) 51 Cal.3d 437, 441.) Because “revocation of [probation] is not part of a criminal prosecution, ‘the full panoply of rights due a defendant in such a proceeding does not apply to parole revocations.’ ” (*Ibid.*) “To reverse a [probation] revocation order, the probationer must establish that the [trial] court abused its discretion.” (*Id.* at p. 442.) “ ‘[O]nly in a very extreme case should an appellate court interfere with the discretion of the trial court in the matter of denying or revoking probation.’ ” (*Id.* at p. 443.) As King tested positive for use of methamphetamine and admitted using methamphetamine, the trial court did not abuse its discretion in revoking probation.

King submitted a letter to the trial court stating, “I would like to appeal . . . on the matter of my sentencing and my probation hearing. I would like to also appeal the weapon enhancement charge. I received an extra year for a weapon that was not found on me at the time of my arrest and I did not harm anyone with a weapon.”

In the trial court King made no objection to the sentence that was imposed. Generally, “complaints about the manner in which the trial court exercises its sentencing discretion and articulates its supporting reasons cannot be raised for the first time on appeal.” (*People v. Scott* (1994) 9 Cal.4th 331, 356.) Nor in viewing the record independently does there appear to be any impropriety in the trial court’s calculation of the sentence. King was represented by competent counsel throughout the proceedings.

As to the probation conditions, “[a] condition of probation will not be held invalid unless it[:] ‘(1) has no relationship to the crime of which the offender was convicted, (2) relates to conduct which is not in itself criminal, and (3) requires or forbids conduct which is not reasonably related to future criminality . . . .’ [Citation.] Conversely, a

condition of probation which requires or forbids conduct which is not itself criminal is valid if that conduct is reasonably related to the crime of which the defendant was convicted or to future criminality.” (*People v. Lent* (1975) 15 Cal.3d 481, 486.) In this case, the charges against King, including the two to which he pled no contest, were related to an incident in which he threatened his girlfriend “while brandishing a bat and knife, [and] threatened to kill his girlfriend before punching her in the forehead in front of their children . . . .” The condition that he not have contact with her was reasonably related to these crimes.

The *Wende* brief questions whether the trial court exceeded its jurisdiction “when after sentencing appellant to state prison it continued its order prohibiting appellant from contacting the victim for a period of three years from the original sentencing.” However, that is not precisely what occurred. At the conclusion of the sentencing hearing, the court was asked whether a prior restraining order would terminate at that point. The court indicated that the order “is what it is. If there’s a family law order . . . for supervised visitation and the like can take place. As it relates to the main victim, it remains in place until its expiration.” Thus, the court did not impose or continue any form of stay away order, and no such order appears in either the court’s minutes or the abstract of judgment. The court merely declined to modify an order entered in separate proceedings and the accuracy of its response to counsel’s inquiry is not an issue before us.

Regarding the weapons enhancement, King is precluded from challenging the factual basis for his plea. “ ‘Issues cognizable on an appeal following a guilty plea are limited to issues based on “reasonable constitutional, jurisdictional, or other grounds going to the legality of the proceedings” resulting in the plea.’ ” (*People v. Pinon* (1979) 96 Cal.App.3d 904, 910.) In any event, King admitted use of a deadly weapon and the testimony of the victim at the preliminary hearing and as recited in the probation report provided a factual basis for the weapon enhancement.

There are no issues that require further briefing.

## **DISPOSITION**

The judgment is affirmed.

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Pollak, J.

We concur:

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Parrilli, Acting P. J.

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Siggins, J.